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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

June 8, 1995

UNITED STATES OF AMERICA,)	
Complainant)	
)	8 U.S.C. 1324a Proceeding
vs.)	
)	OCAHO Case No. 95A00041
HAILEY'S J.P., INC.,)	
D/B/A COLORADO ROSIE'S,)	
Respondent)	

ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION

I. INTRODUCTION

On March 3, 1995, complainant, acting by and through the Immigration and Naturalization Service (INS), filed the Complaint at issue against Hailey's J.P., Inc., d/b/a Colorado Rosie's (respondent) in the Office of the Chief Administrative Hearing Officer (OCAHO). That Complaint, predicated on Notice of Intent to Fine (NIF) DEN-94-EO-000045, which was issued and served by INS on October 25, 1994, included two (2) counts alleging 60 violations of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a, for which civil penalties totaling \$27,600 were assessed.

In Count I, complainant alleged that respondent hired the six (6) individuals named therein for employment in the United States after November 6, 1986, and that respondent failed to make available for inspection the Employment Eligibility Verification Forms (Forms I-9) for those individuals, in violation of IRCA, 8 U.S.C. § 1324a(a)(1)(B). Complainant levied civil money penalties of \$460 for each of those six (6) alleged violations, or a total of \$2,760.

In Count II, complainant charged that respondent failed to properly complete section 2 of the Forms I-9 for the 54 individuals named therein, who were hired by respondent for employment in the United States after November 6, 1986, in violation of IRCA, 8 U.S.C. § 1324a(a)(1)(B). Complainant assessed civil money penalties of \$460 for each of those 54 alleged violations, or a total of \$24,840.

On March 6, 1995, the Chief Administrative Hearing Officer (CAHO) issued a Notice of Hearing and forwarded a copy of the Complaint to respondent.

On March 27, 1995, respondent's counsel filed a Motion to Withdraw Representation as Attorney.

On April 10, 1995, respondent filed a letter pleading pro se, signed by Laurie Hollywood on behalf of Hailey & J.P. Inc. That letter pleading, captioned Response to Notice of Intent to Fine Hailey & J.P. Inc. is deemed to be respondent's Answer, which admits liability on all of the 60 allegations set forth in Counts I and II.

On April 20, 1995, the undersigned denied respondent counsel's Motion to Withdraw Representation as Attorney.

On May 8, 1995, respondent filed pro se a letter signed by Laurie J. Hollywood stating that, due to financial considerations, respondent's counsel of record no longer represents respondent.

On May 30, 1995, complainant filed a Motion for Summary Decision asserting that there is no genuine issue as to any material fact and as such complainant is entitled to summary decision in its favor on all of the facts of violation alleged in the 60 violations at issue.

On June 5, 1995, respondent's counsel of record filed a pleading captioned Answer to Motion for Summary Decision, as well as a Request for Reconsideration of Motion to Withdraw as Attorney.

II. DISCUSSION

The pertinent procedural rule governing motions for summary decision provides that:

[t]he Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, and material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

28 C.F.R. § 68.38(c).

This rule is similar to and based upon Rule 56(c) of the Federal Rules of Civil Procedure, which provides for the entry of summary judgment in Federal court cases. For this reason, Federal case law interpreting Rule 56(c) is instructive in determining whether summary decision under section 68.38 is appropriate in proceedings before this Office. Alvarez v. Interstate Highway Constr., 3 OCAHO 430, at 7 (1992).

The purpose of summary adjudication is to avoid an unnecessary hearing when there is no genuine issue as to any material fact, as

shown by the pleadings, affidavits, discovery, and any other judicially noticed matters. United States v. Goldenfield Corp., 2 OCAHO 321, at 3 (1991). A genuine issue of fact is material if it might affect the outcome of the suit. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); United States v. Primera Enters., Inc., 4 OCAHO 615, at 2 (1994). In determining whether there is a genuine issue as to a material fact, all facts and reasonable inferences to be derived therefrom are to be viewed in the light most favorable to the non-moving party. Matsushita Elec. Indus. v. Zenith Radio, 475 U.S. 574, 587 (1986); Primera Enters., Inc., 4 OCAHO 615, at 2.

The party seeking summary decision assumes the burden of demonstrating to the trier of fact the absence of a genuine issue of material fact. Once the movant has carried this burden, the opposing party must then come forward with "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 587.

A. Liability Established

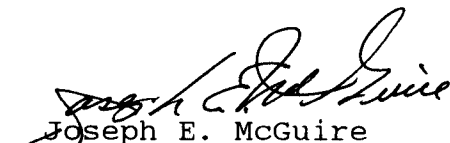
In both its Answer, filed pro se, and its Answer to Motion for Summary Decision, filed by its counsel of record, respondent admits liability on all allegations contained in Counts I and II of the Complaint. As a result of these admissions, there is no genuine issue as to any material fact, and complainant's Motion for Summary Decision is granted as to respondent's liability for the 60 violations set forth in Counts I and II of the Complaint.

B. Civil Money Penalty

In regard to those 60 violations in Counts I and II, the appropriate civil money penalty amounts will be determined by giving due consideration to the five (5) criteria listed in the pertinent provision of IRCA governing civil money penalties for paperwork violations, 8 U.S.C. § 1324a(e)(5), which provides that:

With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil money penalty in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

In lieu of conducting an evidentiary hearing on the sole remaining issue, that of determining the appropriate civil money penalties for these 60 violations, the parties are instructed to submit concurrent written briefs, on or before June 30, 1995, containing recommended civil money penalty amounts utilizing the criteria found at 8 U.S.C. § 1324a(e)(5).


Joseph E. McGuire
Administrative Law Judge

CERTIFICATE OF SERVICE

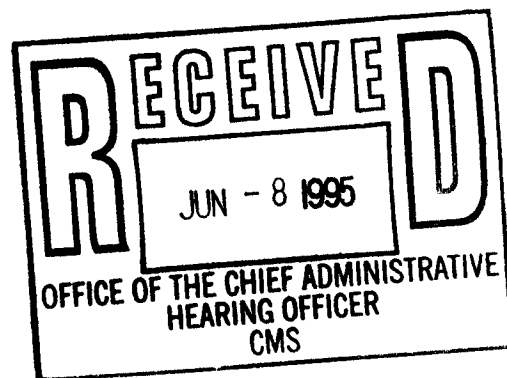
I hereby certify that on this 8th day of June, 1995, I have served copies of the foregoing Order Granting Complainant's Motion for Summary Decision to the following persons at the addresses shown, in the manner indicated:

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